IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 2630 of 2004(K)

PETITIONER:

A.K.MALATHI, HINDI TEACHER,
KRISHNAVILASAM U.P.SCHOOL, KAPPAD P.O., KANNUR-6.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

RESPONDENTS:

---

1. GOVERNMENT OF KERALA, REPRESENTED BY
SECRETARY, GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. DISTRICT EDUCATIONAL OFFICER, KANNUR.

3. ASSISTANT EDUCATIONAL OFFICER,
KANNUR NORTH, KANNUR.

4. MANAGER, KRISHNAVILASAM U.P.SCHOOL,
KAPPAD P.O., KANNUR-6.

5. M.SAROJINI, RETD.ASSISTANT EDUCATIONAL
OFFICER, VRINDAVAN P.O., CHATUKAPARA, KUDALI,
KANNUR.

6. THE ACCOUNTANT GENERAL, KERALA,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BINDU.K.
SRI.P.M.PAREETH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF ORDER OF APPOINTMENT DATED 6.6.88 AS JUNIOR HINDI TEACHER W.E.F. 6.6.1988.

EXT.P2: TRUE COPY OF PROCEEDINGS OF THE 3RD RESPONDENT DATED 15.7.93.

EXT.P3: TRUE COPY OF STAFF LIST FOR THE YEAR 1991-92.

EXT.P4: TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT SANCTIONING CLASS DIVISIONS AND SHOWING THE STRENGTH OF STUDENTS AND SANCTIONED STAFF FOR THE ACADEMIC YEAR 1991-92 DATED 7.8.1991.

EXT.P5: TRUE COPY OF EDUCATIONAL OFFICER, KANNUR IN RELAXATION OF GOVERNMENT ORDER. A TRUE COPY OF THE GOVERNMENT ORDER DATED 4.3.1998 APPROVING 15 DIVISONS DURING 1997-98 WITH THE STAFF STRENGTH AS ON 1991-92.

EXT.P6: TRUE COPY OF THE ORDER OF APPOINTMENT DATED 4.6.1997 APPROVED BY THE PROCEEDINGS OF ASST. EDUCATIONAL OFFICER.

EXT.P7: TRUE COPY OF REVISED STAFF FIXATION ORDER ISSUED BY THE 3RD RESPONDENT DATED 30.5.1998.

EXT.P8: TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DATED 20.12.2003.

EXT.P9: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT THROUGH THE MINISTER FOR EDUCATION DATED 27.10.2003.

/TRUE COPY/

PA TO JUDGE.

C.N.RAMACHANDRAN NAIR, J.

- -

W.P.(C)NO.2630 OF 2004

- -

Dated this the 24th day of January 2007

JUDGMENT

Petitioner is challenging Ext.P8 order whereunder Government has declared 5th respondent's entitlement to get reimbursement of salary paid to petitioner in 1997-98 and recovered by the Government on account of irregular approval of petitioner's appointment by 5th respondent who was the then AEO. Petitioner joined 4th respondent school on 6-6-1988 and on account of want of students she left service during 1993. However, on account of management's report about availability of students and starting of additional division, petitioner was again appointed. 5th respondent who was then AEO approved petitioner's appointment. However, the Accountant General noticed that required strength of students were not there and consequently required period of work was not available justifying petitioner's appointment. The counsel for the petitioner submitted that petitioner was appointed after Government sanctioned additional division. The findings of the Accountant General on strength of students is not disproved and is rather an

admitted fact. Therefore, management obviously misrepresented and obtained sanction from the Government. It is the duty of the AEO being the field officer to inspect the school and satisfy himself about the functioning of the school in compliance with statutory provisions. Rule 6 of Chapter XXIII of the KER entitles for appointment of additional teacher only if required, based on work and number of divisions available. It is not in dispute that there was not enough working hours to justify appointment of additional teacher. Therefore, the Accountant General's recommendation to recover loss sustained by Government on account of irregular appointment of teacher confirmed by the AEO is only to be upheld and I do so. The only question is who should bear the loss. Eventhough petitioner is beneficiary I feel blame should go to the AEO because AEO is representative of the Government in the field who is to ensure that the school complies with the statutory Rules. Therefore, Ext.R5(a) order directing DDE, Kannur to recover full amount from petitioner and pay the same to the 5th respondent from whom recovery is already made is not justified. Counsel for the petitioner

submitted that petitioner could not challenge Ext.R5 because the same is not served to the petitioner and what is served on petitioner Ext.P8 is under challenge.

In the circumstances and since the petitioner has atleast worked as teacher though not in regular employment, writ petition is disposed of modifying Exts.P8 and R5 by directing fourth respondent to permit petitioner and 5th respondent to share equally the loss sustained by the Government. Accordingly, petitioner is directed to pay 50% of the amount recovered from 5th respondent without any interest to 5th respondent within a period of two months from today, failing which 4th respondent will recover so much amount from petitioner's salary and along with it interest at the rate of 1½% per month until full amount is paid to the 5th respondent as above.

C.N.RAMACHANDRAN NAIR, JUDGE

jes